

1 Jerry Harkins # 85126

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6 UNITED STATES DISTRICT COURT

7 DISTRICT OF NEVADA

8 * * * * *

9 Jerry Harkins,) Case No. 3:10-cv-00372-Far-Ram

10 Petitioner,)

11 -vs-)

12 Jack Palmer, et.al,)

13 Respondents.)

MOTION FOR
APPOINTMENT OF COUNSEL
Second Request

14
15 COMES NOW Petitioner, Jerry Harkins, in pro se, and moves
16 this Court for an order appointing him counsel in and for the instant § 2254
17 habeas corpus proceeding.

18 This motion is made and based upon 18 U.S.C. § 3006A(g), 28 U.S.C.
19 § 1915(e)(1), 28 U.S.C. § 2254(h); all papers, pleadings and documents on file
20 herein; and the following points and authorities.

21 POINTS AND AUTHORITIES

22 I. STATEMENT OF FACTS

23 Petitioner is unable to afford counsel. See Application to Proceed In
24 Forma Pauperis on file herein.

25 The substantive issues and procedural matters in this case are too complex
26 for Petitioner's comprehension and abilities.

27 Petitioner, by reason of his incarceration, cannot investigate, take
28 depositions, or otherwise discover evidentiary materials on his own accord.

1 Petitioner's sentence structure is Life

2 There are are not additional facts attached hereto on additional
3 page(s) to be incorporated herein.

4 Counsel could not only assist Petitioner with a much better presentation
5 of the substantive and procedural issues before this Court, e.g., merits of the
6 claims, AEDPA's § 2254(d) test, exhaustion, etc., but counsel would likewise
7 make much easier this Court's task of discerning the issues and adjudicating
8 them as upon a competent counsel's ability to present same to the Court.

9 The ends of justice would best be served in this case via the appointment
10 of counsel, as Petitioner's sentence structure, in conjunction with the
11 complexities of the legal issues herein, plead for such an appointment.

12 **II. ARGUMENT FOR APPOINTMENT**

13 Appointment of counsel in § 2254 cases is authorized within 18 U.S.C.
14 § 3006A(g) and 28 U.S.C. §§ 1915(e)(1); 2254(h). This Court may appoint
15 counsel where the "interests of justice" so require. Jeffers v. Lewis, 68 F.3d
16 295, 297-98 (9th Cir. 1995). This interest is best served when indigent
17 petitioners who are unable to "adequately present their cases" are appointed
18 counsel to do so for them. IId.

19 Although appointment is usually within this Court's sound discretion, a
20 handy formula for this Court's consideration is a balancing of the complexities
21 of the issues with a consideration of the severity of the petitioner's penalty.
22 Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir.), cert. denied, 481 U.S. 1023
23 (1987). Ultimately, however, absent a due process implication, this Court has
24 discretion to appoint counsel when it feels that it promotes justice in doing
25 so. IId. See Brown v. United States, 623 F.2d 54, 61 (9th Cir. 1980) (court
26 must appoint counsel where the complexities of the case are such that denial of
27 counsel would amount to denial of due process); Hawkins v. Bennett, 423 F.2d
28 948 (8th Cir. 1970) (counsel must be appointed where petitioner is a person of

1 such limited education as to be incapable of presenting his claims fairly).

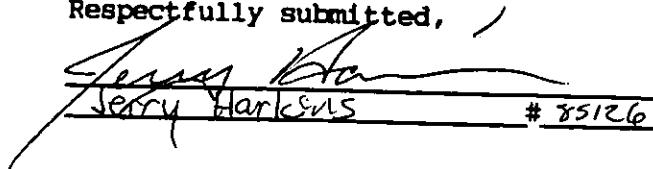
2 Petitioner submits that the facts above, in conjunction with these legal
3 principles, compel appointment of counsel. Indeed, the complexities of the
4 issues in relation to Petitioner's sentence, implicate the need of counsel to
5 promote not only justice, but fairness, as well. Jeffers, 68 F.3d at 297-98.

6 **III. CONCLUSION**

7 For the reasons set forth above, this Court should appoint counsel to
8 represent Petitioner in and for all further proceedings in this § 2254 habeas
9 corpus action.

10 Dated this 11th day of May, 20 11.

11 Respectfully submitted,

12 
13 Jerry Harkins

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